

## Chapter 6

# Working for Your Employer After Injury

➔ *For tips on how to “Keep Your Claim on Track,” see page 17. See also Chapter 9, “For More Information and Help.”*

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After a job injury, staying at work or returning to work safely and promptly can help in your recovery. It can also help you avoid financial losses from being off work. This chapter describes how you can continue working for your employer.

### Can I stay at work or return to work, and what work can I do?

After you are hurt on the job, many people work with you to decide how you will stay at work or return to work and what work you will do. These people include:

- Your primary treating physician
- Your employer (supervisors or others in management)
- The claims administrator
- Your attorney, if you have one.

Sometimes doctors and claims administrators do not fully understand your job or other jobs that could be assigned to you. Therefore, it is important that everyone stay in close touch throughout the process. You (and your attorney, if you have one) should *actively* communicate with your primary treating physician, your employer, and the claims administrator about:

- The work you did before you were injured

- Your medical condition and the kinds of work you can do now
- The kinds of work that your employer could make available to you.

## **What happens while I am recovering?**

Soon after your injury, the primary treating physician examines you and sends a report to the claims administrator about your medical condition. If the doctor says you are able to work, he or she should describe:

- Clear and specific limits, if any, on your job tasks while recovering. These are called “work restrictions.” They should be based on full and accurate information from you and your employer about the activities and demands of your job. They are intended to protect you from further injury.

**Example:** No lifting over 50 pounds at any time. No lifting over 30 pounds more than 10 times per hour. No lifting over 30 pounds more than 15 minutes per hour.

- Changes needed, if any, in your schedule, assignments, equipment, or other working conditions while recovering.

**Example:** Provide headset to avoid awkward positions of the head and neck.

If the doctor reports that you cannot work at all while recovering, you cannot be required to work.

To review the steps you can take if you disagree with a medical report, see Chapter 4, pages 26-29 and 32.

## ***If You Can Work With Restrictions***

If your primary treating physician reports that you can stay at work or return to work with work restrictions, any work that your employer assigns must meet these restrictions. Your employer may, for example, change certain tasks, reduce your time on certain tasks, or provide helpful equipment. Or, your employer may say that work like this is not available – if this happens, you cannot be required to work.

## ***If You Can Work Without Restrictions***

If your primary treating physician reports that you can stay at work or return to your job without restrictions, your employer usually must give you the same job and pay that you had before you were injured. The employer can require you to take the job. This could happen soon after the injury, or it could happen much later, after your condition has improved.

### **My employer assigned work that seems to violate my work restrictions. What can I do?**

You should show the doctor's work restrictions to your employer and discuss how the restrictions can be met. You don't have to accept an assignment that does not meet the restrictions. If you refuse this kind of assignment, you should clearly explain to your employer how it fails to meet the restrictions. If possible, do this in writing.

If your employer takes or threatens action against you because you won't accept this work assignment, this could be a violation of California Labor Code section 132a, which prohibits discrimination against injured workers.

If your employer cannot give you work that meets the work restrictions, the claims administrator must pay temporary total disability benefits (see Chapter 5).

If you have questions or need help, use the resources in Chapter 9. Don't delay, because there are *deadlines* for taking action to protect your rights.

#### **TD Benefits**

- If you lose wages while recovering, you may be eligible for temporary disability (TD) payments. To learn about these payments, see Chapter 5.

### **What happens if I don't fully recover?**

Your primary treating physician may determine that you will never be able to return to the same job or working conditions that you had before you were injured. The doctor should report this in writing. The report should include permanent work restrictions to protect you from further injury.

To assist your primary treating physician, you and your employer or the claims administrator may jointly fill out a “Description of Employee’s Job Duties” on DWC AD form 10133.33. The doctor can then review what you wrote on the form to make an appropriate determination.

To review the steps you can take if you disagree with a medical report, see Chapter 4, pages 26-29 and 32.

### **PD Benefits**

- If your primary treating physician reports that you will never recover completely, you may be eligible for permanent disability (PD) payments. To learn about these payments, see Chapter 7.

## **Can I return to work for my employer even if I don't fully recover?**

It depends on whether your employer can offer you a suitable job. If not, you may be eligible for other benefits if you were injured in 2004 or later.

### ***For Dates of Injury in 2013 or Later***

#### **If Your Employer Offers You Work**

If you were injured in 2013 or later and your employer can offer you work, the claims administrator must send you a “Notice of Offer of Regular, Modified, or Alternative Work” on DWC-AD form 10133.35. The claims administrator must send this to you within 60 days after the claims administrator learns you have a permanent partial disability that has become permanent and stationary (see Chapter 7). Your primary treating physician or another physician who makes this determination must complete and send the claims administrator a “Physician’s Return-to-Work & Voucher Report” on DWC-AD form 10133.36.

The offer must be for a job that you are able to perform. In addition, the job must:

- Meet the work restrictions in the doctor's report
- Last at least 12 months
- Be within a reasonable commuting distance of where you lived at the time of injury.

The officer could involve one of the following:

1. **Regular work.** This is your usual job or position at the time of injury. It must pay the same wages and benefits that you were paid at the time of injury.
2. **Modified work.** This is your old job with changes that meet the doctor's work restrictions. It must pay at least 85% of the wages and benefits that you were paid at the time of injury.

**Examples:** Changing certain tasks, reducing time on certain tasks, changing the workstation, providing helpful equipment, changing the work location.

3. **Alternative work.** This is work that is different from your old job and meets the doctor's work restrictions. It must pay at least 85% of the wages and benefits that you were paid at the time of injury.

If your employer offers you work that meets all of the requirements described above:

- You have only 30 days to accept the offer. If you don't respond within 30 days, your employer could withdraw the offer.
- The claims administrator won't be required to offer you a supplemental job displacement benefit. This is true *whether or not* you accept the offer.

### **If Your Employer Doesn't Offer You Work**

If you were injured in 2013 or later, your employer does not offer you modified or alternative work, and your injury causes permanent partial disability, the claims administrator must send you a supplemental job displacement benefit, or "voucher." Permanent disability is discussed in Chapter 7. Supplemental job displacement benefits are described in Chapter 8.

### ***For Dates of Injury 2004 Through 2012***

#### **If Your Employer Offers You Work**

If you were injured sometime in 2004 through 2012 and your employer can offer you work, the claims administrator must send you a "Notice of Offer of Modified or Alternative Work" on DWC-AD form 10133.53. The claims administrator must send this to you within 30 days after your final TD payment.

The offer must be for a job that you are able to perform. In addition, the job must:

- Pay at least 85% of the wages and benefits that you were paid at the time of injury

- Meet the work restrictions in the doctor's report
- Last at least 12 months
- Be within a reasonable commuting distance of where you lived at the time of injury.

The offer could involve one of the following:

1. **Modified work.** This is your old job with changes that meet the doctor's work restrictions.

**Examples:** Changing certain tasks, reducing time on certain tasks, changing the workstation, providing helpful equipment, changing the work location.

2. **Alternative work.** This is work that is different from your old job and meets the doctor's work restrictions.

If your employer offers you work that meets all of the requirements described above:

- You have only 30 days to accept the offer. If you don't respond within 30 days, your employer could withdraw the offer.
- The claims administrator won't be required to offer you a supplemental job displacement benefit. This is true *whether or not* you accept the offer.

### **If Your Employer Doesn't Offer You Work**

If you were injured sometime in 2004 through 2012, your employer does not offer you modified or alternative work, you do not return to work for your employer within 60 days after your final TD payment, and your injury causes permanent partial disability, the claims administrator must send you a supplemental job displacement benefit, or "voucher." Permanent disability is discussed in Chapter 7. Supplemental job displacement benefits are described in Chapter 8.

### **My employer will not offer or assign me the kind of work that I want. What can I do?**

In some cases, the work assigned or offered to you may seem unfair, or your employer may not offer you any work at all. An employer, however, is not always required to offer you a job that you want. For example, there may not be any jobs you want that meet the doctor's work restrictions. Or your employer's decision may be justified by business realities.

On the other hand, if the reason your employer will not offer you the work you want is because you have a job injury or because you requested workers' compensation benefits, this could be a violation of California Labor Code section 132a. Similarly, if the reason your employer will not offer you the work you want is because you have a serious and permanent disability, even though you could do the job with a reasonable accommodation, this could be a violation of the federal Americans with Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA). (For information about the interplay between workers' compensation and disability rights laws, see *Helping Injured Employees Return to Work: Practical Guidance Under Workers' Compensation and Disability Rights Laws in California* (2010), listed in Chapter 9.)

If you have questions or need help, use the resources in Chapter 9. Don't delay, because there are *deadlines* for taking action to protect your rights.